

# **MINUTES**

## **Montana Fish and Wildlife Commission Meeting**

### **FWP Headquarters**

**1420 East 6<sup>th</sup> Avenue; Helena, MT**

**November 14, 2013**

Commission Members Present: Dan Vermillion, Chairman, Richard Stuker Vice-Chairman,

Matthew Tourtlotte, Larry Wetsit, Gary Wolfe

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director and FWP Staff.

Guests: November 14, 2013 - See Commission file folder for sign-in sheet.

#### **Topics of Discussion:**

1. Call to Order - Pledge of Allegiance
2. Approval of Minutes of October 10, 2013 Commission Meeting
3. Approval of Commission Expenses
4. Commission Reports
5. Director's Report
6. Tribute to Merle Rognrud and Bob Eng
7. 2014 Commission Meeting Calendar – Final Approval
8. Pine Grove Pond FAS Addition (R1) – Final Approval
9. Commercial Bait Seining Waters Annual Rule – Proposed
10. Helena Urban Deer Management – Proposed
11. Black-footed Ferret Augmentation to CMR – Final Approval
12. Unlocking State Lands Program Administrative Rules (HB444) – Proposed
13. Red Hill Access Acquisition (R4) – Final Approval
14. Aunt Molly WMA - Pocha Land Exchange (R2) – Endorsement to Proceed

15. Haskill Basin CE (R1) – Endorsement to Proceed
16. Sinclair Creek CE (R1) – Endorsement to Proceed
17. Olson Farms CE (R4) – Endorsement to Proceed
18. Box Elder Creek CE (R6) - Endorsement to Proceed
19. Flatt Property CE (R6) – Endorsement to Proceed
20. Public Comment – For Issues Not On This Agenda

**1. Call to Order - Pledge of Allegiance**

Chairman Vermillion called the meeting to order at 8:31 a.m. and led the Pledge of Allegiance.

**2. Approval of the Commission Meeting Minutes of October 10, 2013**

***Action: Commissioner Stuker moved and Commissioner Tourtlotte seconded the motion to approve the October 10, 2013 minutes. Motion carried.***

**3. Approval of Commission Expenses**

***Action: Commissioner Tourtlotte moved and Commissioner Stuker seconded the motion to approve the Commission expenses.***

Chairman Vermillion asked about the communication and other expenses.

Coleen Furthmyre, Commission Secretary explained the Commissioner training that was held in August (\$1,500) is the overage for other expenses; the communication overage is Verizon charges for the tablets of \$180.12 per month. Both of these expenses were not included in the budget for fiscal year 2014.

***Action on Motion: Motion Carried.***

#### 4. Commission Reports

Commissioner Wetsit reported he attended a TIP-Mont meeting; had good discussions on the responsibilities of the board, very beneficial. Received correspondence regarding matters on the agenda.

Commissioner Wolfe reported hunting Season is off to a slow start, but reports from past weekend suggest that Region 1 and Region 2 deer and elk harvest is on par with last year, but lagging the 5-yr average. Two bull moose were poached and left in the field, a sow grizzly bear with three cubs were shot north of Ovando, FWP and USFWS are cooperating in the grizzly bear investigation. FWP had to lethally remove three grizzly bears in R1 due to repeated conflicts with humans, two of which were related to conflicts associated with chickens. Attended the Blackfoot Drought Committee's annual meeting to evaluate this year's drought response; the Committee consists of local irrigators, conservation organizations, different agencies and is administered by the Blackfoot Challenge; this year was the first time the Blackfoot River has been placed under a complete 24-hr fishing closure in response to low flows. Has received numerous calls: Echo Lake resident urging the Commission reconsider a no wake restriction at high water levels to reduce lakeshore erosion on private property; several calls regarding archery elk permits in the Breaks, some favored maintaining status quo, others asked to revert to unlimited permits; calls encouraging FWP to return to special late season cow elk hunts in units where herds are over objective, this individual said he has lost opportunity to hunt private land as a result of eliminating these late season hunts; call encouraging FWP to implement a 4-7 year waiting period for limited bull elk permits; if a hunter is successful in drawing a limited bull permit, they should be required to wait several years before being eligible to reapply; call encouraging requesting that FWP consider augmenting the moose population in the Swan Valley; call and info from an independent researcher reporting developmental malformations in Bitterroot ungulates, this person suspects pesticides and/or herbicides as the cause and believes this contributes to lower fawn and calf survival rates.

Commissioner Tourtlotte reported has received numerous calls from hunters; reports have been mixed, dry and warm; pleased to see hunters are still going out and enjoying themselves. Two calls regarding landowner and hunter issues; one report was regarding improper signage of public ground, the Department is working on correcting this; second was a landowner removing signage on public ground to restrict access, Region 5 enforcement has addressed the issue. Couple cases of poaching south of Billings. Received a call from a group of hunters expressing their gratitude with the new Block Management Area (BMA) by Terry; hunting and access to the property is great.

Commissioner Stuker reported he has received several calls from Lost River Ranch area residents; stated hunters are having problems finding the proper area to hunt, FWP staff have put up temporary signs to resolve this issue; also had problems with the Sheriff not understanding the statute on posting land in this area for no trespassing or hunting; Glasgow warden sent state statutes to me. Participated in a teleconference follow-up meeting on bison; numerous calls regarding what is happening with the bison issue; mainly south Phillips County. Three wolves were spotted in the Chinook/Harlem area. Received a call from a HD 404 rancher feeling FWP should close the hunting season for deer.

Chairman Vermillion stated there is a lot of concern in southwest Montana about deer populations, mainly whitetail; some landowners are not allowing hunters onto their property; very apparent that deer numbers have changed dramatically since August; struggling with how much to defer to the Department as we go forward in the biennium. Attended the first local brucellosis working group meeting; difficult meeting, Quentin Kujala did a wonderful job in defusing the tension; plan is moving forward; attended by a lot of landowners and sportsman/women. Attended Big Horn Sheep meeting with Wool Growers and Wild Sheep Foundation; discussed potential sites for reintroduction/transplant of sheep, disease issues and the structure of the big horn sheep plan; did identify 8-10 sites, will do a preliminary review of those sites. Poaching issues do not seem to be abating. Encourages the Commissioners to meet with Regional biologist and discuss what they are proposing/recommending at the December meeting. Thanked the Commission for the support on the Farm Bill letter and the Proclamation regarding the Land and Water Conservation Fund.

Commissioners discussed having a work session on the biennial big game season-setting process prior to the next meeting.

**5. Director's Report**

Director Hagener reported the Department has received correspondence regarding the deer issue; HD 400 is a 3 week season, getting ready to close; need to take a serious look of how to go into the future; Epizootic Hemorrhagic Disease (EHD) started earlier and stayed longer this year, big factor. The Sage Grouse Advisory Council meetings for public comment have started; expecting a lot of comments; U.S. Fish and Wildlife Service (FWS) have concerns over the draft recommendations. Attended wolverine meeting with FWP staff and FWS in Salt Lake; made clear FWP has major concerns with the direction the FWS are going; FWP questions the science and not giving any consideration to adaptability; FWS possibly might give a six month extension. Waiting for Public Land Public Wildlife (PL/PW) Council members to be announced; hoping to have meeting in December, probably will be January. Block Management (BM) audit results have been given to FWP; have concerns over some issues in the audit. Moving forward on bison issue; had discussions with the Governor's office and Department of Livestock regarding statewide issues and the Yellowstone eco-system.

**6. Tribute to Merle Rognrud and Bob Eng**

Terry Lonner spoke before the Commission giving high esteem to Merle Rognrud acknowledging his part in laying the foundation and his many projects while working for FWP.

Kurt Alt spoke about the many efforts and years put forth by Bob Eng in taking the lead to manage wildlife in the interest of conservation and the people of Montana.

Chairman Vermillion stated it is very apparent that we all are very fortunate to be standing on the shoulders of great people that came before us, not only as Commissioners but as Montanans who depend on and enjoy our resources.

Bob Ream, former Commission Chairman, praised Merle Rognrud for all his hard work, he was a great man.

#### **7. 2014 Commission Meeting Calendar – Final Approval**

Director Hagener explained the following changes to the calendar: Ken McDonald, Wildlife Administrator feels having the May meeting in Glendive would be problematic for the wolf and furbearer regulations, would like to hold the meeting May 15 in Kalispell or Great Falls; Hank Worsech asked to change the June meeting to June 12 for drawing purposes; July meeting be changed from Kalispell to a different location because of high hotel costs (tourist season); August 28 teleconference meeting be changed to August 26 due to the late waterfowl season submission to FWS.

Chairman Vermillion stated he would like to have the May meeting in Glendive; asked if the tentative wolf season setting has to be in May.

McDonald and Chairman Vermillion conversed about the May meeting.

Chairman Vermillion reiterated he would like to have the May meeting in Glendive; it is important for everyone to understand the role warm water fisheries plays in that part of the state; recommends looking at different options.

Commission Tourtlotte agreed with Chairman Vermillion; just as important as the wolf season setting.

Commissioner Wolfe suggested a Commission field trip to Glendive and holding the meeting in Helena.

Chairman Vermillion stated there are streaming capabilities in Miles City.

Commissioner Wetsit stated it is important to host a meeting in eastern Montana; paddlefish season is a good venue to make an attempt of having the meeting in eastern Montana.

Commissioner Wolfe asked if there is any anticipation having a joint meeting with the Parks and Recreation Board in 2014.

Director Hagener stated the Board does have a tentative agenda, not sure of exact dates.

Commissioner Stuker spoke with a Department of Livestock (DOL) board member from Lewistown; he suggested having a meeting with the DOL board members and FW Commission to discuss trapping and predators.

Chairman Vermillion stated the meeting dates look good except for the May meeting; will take final action at the December meeting;

**8. Pine Grove Pond FAS Addition (R1) – Final Approval**

Bruce Rich, Fisheries Administrators explained on June 5, 2013, the Fish and Wildlife Commission (FW) endorsed FWP's request to pursue acquisition through donation of a 5.39 acre parcel that adjoins the 13-acre Pine Grove Pond FAS and would provide access to the Whitefish River; the FAS is a popular family fishing pond with approximately 30,000 visitor days each year. The Whitefish Credit Union owns a narrow strip of land that is located between the FAS and the Whitefish River with 1,800 feet of river bank. The parcel is a part of a larger piece of property that the credit union intends to sell and has offered to donate the 5.39 acre parcel. FWP conducted an environmental review and received comments from 10 individuals; all comments were in favor, one comment noted this would improve floating access to the Whitefish River. The adjacent landowner, who donated the original fishing access site, identified the property and persuaded the credit union to donate the property.

***Action: Commissioner Wolfe moved and Commissioner Stuker seconded that the Commission authorize FWP to accept the Whitefish Credit Union's offer to donate a parcel of land adjoining the Pine Grove Pond Fishing Access Site.***

Chairman Vermillion asked for public comment.

Vermillion thanked the Whitefish Credit Union and adjoining landowner, Robin Street.

***Action on Motion: Motion Carried.***

Rich recognized Jim Vashro, Region 1 Fisheries Manager, quarterbacked the original FAS and this addition. Stated Vashro is going to be retiring next month; has worked 39 years for Department.

**9. Commercial Bait Seining Waters Annual Rule – Proposed**

Bruce Rich, Fisheries Administrator explained bait fish seining license is required for: Persons 15 years of age and older to seine for and transport bait fish for commercial purposes in Montana; and for any person who seines for and has in their possession more than 24 dozen non-game bait fish. The Commission may designate waters that are allowed for these purposes, and FWP describes these waters

annually in the Commercial Bait Seining Application form. If approved, the rationale for each individual change will be released for a 30-day public comment period. Based on the comments received, the list will be modified and proposed to the Commission for final approval in January. Twenty waters, 19 lakes or ponds and 1 group of tributaries to a lake are proposed for deletion from the approved seining water list, and one water is proposed for addition to the list. The primary reason most waters are proposed for deletion is they do not produce suitable numbers of bait fish to make commercial seining a sustainable activity; other reasons include: a current lack of interest in commercial collections; concern that collections could deplete bait fish species necessary to maintain gamefish populations; potential for accidental collection and movement of predator fish that could negatively affect fish populations in other waters; collection practices would interfere with salmonid spawning; or ponds are private and no longer managed by FWP. The proposed changes include:

**Western District:** Ashley Lake tributaries, Stillwater River (Dog Lake downstream to the mouth) , Finger Lake, Fish Lake (Lincoln County), Echo Lake, Whitefish River, Herrig Creek (Little Bitterroot tributary).

**Eastern District:** Bailey Reservoir, Castle Rock Lake, Cow Creek Reservoir, Doug Gardner #2 Reservoir, Ester Reservoir, Johnson Reservoir, Lame Steer Reservoir, Lee (Sam) Reservoir, Little Warm Reservoir, Lyons Reservoir, McChesney Reservoir, Schlesinger Perch Pond, and South Sandstone Reservoir. Wibaux Pond (Wibaux County) is proposed for addition to the list because the bait fish populations are robust and able to sustain commercial harvest.

**Action:** *Commissioner Tourtlotte moved and Commissioner Stuker seconded that the Commission propose the Commercial Bait Fish Seining Waters list recommended by the Department and initiate the public involvement process.*

Chairman Vermillion asked for public comment

Chairman Vermillion, Rich and Don Skaar, Fish Management Section Supervisor, discussed commercial bait seining issues.

**Action on Motion:** *Motion Carried.*

#### 10. Helena Urban Deer Management – Proposed

George Pauley explained in 2003, Montana Legislature authorized cities to create plans to control wildlife to address public health and safety within city limits. The City of Helena developed an Urban Deer Management Plan seeking to initially remove 350 deer to achieve an objective of 25 deer per square mile. FWP completed a third, EA in 2009 that confirmed objectives and methods relative to urban deer management in Helena; within the plan, any take/removal of deer requires approval on an annual basis. To date, a total of 670 deer have been removed, including 140 during the latest removal effort in 2013. FWP does not contribute staff or resources to actual removal efforts. Any quotas do not apply to individual deer removed under urgent public-safety situations. Survey data are collected and analyzed annually in October. The city, in cooperation with the local FWP biologist, establishes a level of take, which is presented to the Commission as a proposal in November and finalized in December, when take efforts are authorized to begin. The take authorization last year was valid through December 31, 2013, with a no-take period extending from April 1 through November 14, 2013. October's survey revealed an estimate of approximately 14 deer per square mile within the City of Helena. This is down from the previous estimate of 34 deer/square mile last year. Due to survey conditions and potential distribution changes, it is likely that the actual abundance is somewhat higher. The estimate was similarly low in 2010, and that prompted removal of 26 deer, resulting in a jump to 32 deer/square mile the subsequent year. To avoid that outcome, FWP is proposing a removal of up to 70 deer, in addition to the 60 remaining on the authorization from last year, for a total proposed maximum take of 130 deer. It is anticipated that this removal will result in a fall 2014 population at or below 25 deer/square mile. Proposed methods will be identical to those employed previously. The City of Helena conducted extensive public involvement in developing its plan and the previous urban deer EA. FWP public comment will extend through 5 p.m. December 9.

Commissioner Wolfe stated mule deer populations are challenged throughout much of their range; asked if the Department has considered trapping and transplanting these mule deer to areas that are having problems.

Pauley stated financial costs and habituated town deer would not adapt well.

Commissioner Stuker asked if other cities are looking into urban deer management.

Pauley stated there are issues in Glendive and Colstrip; staff is working with the City of Missoula.

Chairman Vermillion asked what the protocol is for removing the deer.

Mark Lerum, City of Helena, will put something in the paper for landowners to call if they are having a problem and will conduct a survey; have had contact with landowners that want trapping done to remove the overpopulated deer from their property.

Chairman Vermillion asked for public comment.

Jeanine Brown, Helena, asked for a no vote, other means to handle this; it is the easiest way out for the City.

Marshall Johnson, Regional Director Mule Deer Foundation, explained an alternative option of trapping and translocation; Lewis and Clark chapter members are ready and willing to help by donating funds, trucks, help trap and haul to translocation area.



Bob Ream, former Commissioner suggested the city's CAC reevaluate the numbers or the Commission change the authorization to 100.

Commissioner Wolfe asked Johnson how much funding in the Lewis and Clark chapter is willing to donate.

Johnson explained the foundation would partner with the agency. Other Montana chapters are willing to help and would ask the National Organization to help with funding as well.

Chairman Vermillion asked the Department at the December meeting to explain what the MEPA and statutory requirement would be if it was decided to translocate instead of lethal removal.

Pauley stated Chronic Wasting Disease (CWD) is a major hazard also.

***Action: Commissioner Stuker moved and Commissioner Wetsit seconded that the Commission adopt the proposed 2013 - 2014 take of urban deer by the City of Helena as presented by city staff and FWP. Motion Carried.***

Commissioner Wolfe stated that prior to next year's action on this topic, he encourages the Department to give serious consideration to the concept of trapping and transplanting the mule deer; worthwhile to evaluate the practicality and costs associated with trapping and transplanting as well as looking at opportunities to have the program fully funded by voluntary contributions.

#### **11. Black-footed Ferret Augmentation to CMR – Final Approval**

Ken McDonald, Wildlife Administrator explained efforts to restore black-footed ferrets in Phillips County began in 1994, when a final rule was published designating black-footed ferrets in north-central Montana as experimental-nonessential, which provides landowners protection from regulatory impacts of the endangered species act (ESA). While efforts in Phillips County have not been as successful as the FWS and others would like, it remains an important part of the overall black-footed ferret recovery strategy. With the exception of a recent release of 32 animals at Ft. Belknap, the UL Bend population is the only black-footed ferret population remaining in Montana, and one of only 20 in North America. Seven ferrets were located during surveys in April, and several litters were expected to be produced during the summer; only six ferrets could be located during September surveys and only three could be found in October. FWS believes that a supplemental release of 15-20 captive-reared black-footed ferrets this year would allow the UL Bend population to persist in the short term. Maintenance of this population will allow for future research on sylvatic plague management and potential implementation of a financial incentive program for private landowners to encourage the conservation of black-tailed prairie dogs. Trials on the effectiveness of a plague vaccine are currently underway in Montana and efforts to secure funding for a landowner incentive program are ongoing by the Natural Resources Conservation Service and the Black-Footed Ferret Recovery Implementation Team Executive Committee. Public comment was solicited and collected during completion of the original 1992 EA that allowed for ferret reintroductions into this area. This assessment covers any augmentation of the UL Bend experimental non-essential population of ferrets and because there are no significant new issues or concerns on the refuge landscape, no new public comment is necessary. FWP met with Phillips and Valley county Commissioners regarding this augmentation.

***Action: Commissioner Stuker moved and Commissioner Wolfe seconded that the Commission approve the transplant of up to 20 black-footed ferrets to augment the existing experimental non-essential population at UL Bend.***

Chairman Vermillion asked for public comment.

Chairman Vermillion stated this augmentation is not FWP funded and asked the Department to notify the public that no FWP funds are being used.

***Action on Motion: Motion Carried.***

**12. Unlocking State Lands Program Administrative Rules (HB444) – Proposed**

Alan Charles, Landowner Sportsman Coordinator explained the 2013 Legislature passed HB 444, establishing a program in which a private landowner who provides public access to a parcel of state land through a contractual agreement with FWP can receive a \$500 tax credit for each qualified access to state land, with a limit of \$2,000 per year. The law requires the Commission to adopt administrative rules for establishing contracts that address: Duration of access; types of qualified access; reasonable landowner-imposed restrictions. The law becomes effective January 1, 2014, applies to tax years beginning after December 31, 2013, and terminates December 31, 2018. FWP intends to commence the administrative process of developing contracts with landowners upon adoption of final ARM. FWP would initiate administrative rulemaking, which would include a public comment period. To carry out the new legislation, FWP must have a method by which lawful contracts can be negotiated with landowners to allow public access to state lands through this program. The proposed rules provide a means for complying with HB 444 to implement the Unlocking State Lands Program. If approved, FWP would initiate administrative rulemaking which includes public comment.

**ARM - NEW RULE I STATE LAND ACCESS TAX CREDIT**

1. Pursuant to 15-30-2380 and 87-1-294, MCA, landowners may apply for a contract with the department to become eligible to receive a \$500 tax credit for qualified access to state land, as defined in 77-1-101, MCA.
2. Landowners wanting to be considered for a contract must submit an application by March 15 in the tax year for which credit will be claimed.

3. The department will award contracts no later than May 15 of the tax year in which the credit is to be claimed.
4. The application must state the following and failure to include any one portion may result in denial of the application:
  - a. legal land description of parcel of state land to which access will be provided;
  - b. legal land description of parcel of private land through which access will be provided;
  - c. description of the road or travel route providing public access to the state land parcel;
  - d. map depicting state land parcel, adjacent private land through which public access will be provided, access point where public access on private land begins, and travel route proposed for public access;
  - e. description of method permitted to access state lands;
  - f. indication as to whether or not the landowner is lessee of the state land parcel to which public access will be provided; and
  - g. indication as to whether or not hunting on the private land through which access will be provided is managed through outfitting or commercial hunting.
5. The department must consider the following when awarding contracts:
  - a. verification that the state lands are not restricted or closed to general recreational use by Department of Natural Resources & Conservation;
  - b. verification that the state land will be available for a majority of the year to all general recreational use including hunting, fishing, hiking, wildlife watching, and other uses compatible with the use of state lands;
  - c. access routes restricted to foot travel only must be capable of accommodating normal ambulatory travel and not exceed half a mile; and
  - d. access routes available to vehicles must be capable of accommodating typical road use vehicles.
6. A landowner may impose reasonable limitations through temporary closure of a public access route to address concerns related to high fire danger, weather-related impact to travel route, safety, or agricultural production activities such as livestock handling or harvest and planting of crops, so long as:
  - a. the landowner notifies department regional headquarters at least 24 hours prior to the closure;
  - b. the landowner posts notice to the public on-site; and
  - c. the closure is not in effect:
    - i. for more than seven days without department review and approval; or
    - ii. until the natural environmental conditions no longer exist.
7. Land enrolled in any other department program that secures public access to a state land parcel is not eligible for a contract through this program to provide access to that same state land parcel.
8. To provide verification that the landowner is eligible to receive the tax credit pursuant to 15-30-2380 and 87-1-294, MCA, the department must provide:
  - a. a copy of the contract to the landowner bearing a certification number that confirms the terms of the contract have been fulfilled no later than January 31 after the end of the tax year in which the credit is being claimed; and
  - b. the contract certification number to the Department of Revenue no later than January 31 after the end of the tax year in which the

credit is being claimed.

Commissioner Wolfe asked if the private land is leased to an outfitter or any paid hunting operation on private land, the land owner does not qualify for this program even if he does provide access to the state land.

Charles stated that is correct and explained the law.

***Action: Commissioner Stuker moved and Commissioner Tourtlotte seconded that the Commission propose the Unlocking State Lands Program tax credit administrative rules as presented.***

Chairman Vermillion asked for public comment.

Joe Perry, Montana Sportsman Alliance (MSA) stated this is solution based; supports rule.

Marshall Johnson, Regional Director Mule Deer Foundation stated the Foundation and its members endorse the program and ask the Commission propose the tax credit.

Ben Lamb, Helena, stated this program is a good step; would help promote.

Commissioner Stuker stated he understands the statute of outfitting and fee hunting land not qualifying for this program, but within that section of the rule, if it would open up larger section(s) of land it should qualify; would like to see that section of the rule changed in the future.

***Action on Motion: Motion Carried.***

### **13. Red Hill Access Acquisition (R4) – Final Approval**

Ken McDonald, Wildlife Administrator explained this project will secure permanent and year-long public access to Lewis and Clark National Forest lands in the Big Snowy Mountains in Fergus County. This is a high-use area for elk, mule deer, black bear, mountain grouse and turkey hunting opportunities. Elk are currently more than 400 percent above objective in the Snowy Elk Management Unit, mainly due to lack of hunting access. Adjacent private lands are currently outfitted or are at risk of purchase by nonresident landowner

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who are often unwilling to allow public access. Public access to this area is limited to a few access points via Bureau Land Management (BLM) land along Red Hill Road further south; these access points do not provide adequate FS access to the East Fork drainage, due to steep topography south of this property. A final EA and decision notice have been completed and published along with public involvement; strong public support has been voiced for this effort; 51 comments were received, 49 in favor and 2 did not specify. Funding will come from the Home to Hunt account. Thanked the Rocky Mountain Elk Foundation (RMEF) for their hard work on this project.

Vermillion asked for public comment.

Blake Henning, RMEF explained the Foundation is proud to offer this acquisition at a discounted price and the partnership with all parties involved. Acknowledged and thanked the landowners, Marshal and Leslie Long. Foundation wants to do more of these kind of projects, to improve hunter access. Thanked the Commission for their support.

Kevin Kepler, Lewistown sportsman, thanked the RMEF and FWP for the project; the way and the speed this project moved shows sportsman that the Department is not just talking about access, but accomplishing access.

Joe Perry, Montana Sportsman Alliance, supports acquisition; salutes RMEF and FWP.

Scott Westphall RMEF supports project; not only a opportunity for Montana but all citizens; a lot of things to do on this property.

***Action: Commissioner Stuker moved and Commissioner Wolfe seconded that the Commission approve purchase of permanent public access via the Red Hill Road Access Project from the Rocky Mountain Elk Foundation.***

Chairman Vermillion thanked and expressed gratitude to RMEF, private citizens, FWP and the legislature for the Coming Home to Hunt funding; encourages the sportsman to thank all parties

McDonald introduced and thanked John Hagengruber and the U.S. Forest Service (FS); FS was a key partner in this acquisition as well.

***Action on Motion: Motion Carried.***

#### **14. Aunt Molly WMA - Pocha Land Exchange (R2) – Endorsement to Proceed**

Ken McDonald, Wildlife Administrator explained although most of the Aunt Molly Wildlife Management Area (WMA) consists of riparian woodlands and native grasses, FWP also acquired a 70-acre dry land farm field when it purchased the property in 1979. The original purchase resulted in a 300-acre parcel on the WMA to which legal public access is extremely limited. At that time, both the seller and FWP clearly identified the need to exchange the WMA farm field for a portion of the neighboring ranch's lands along the Blackfoot River to both enable public access to WMA lands and to provide the ranch the benefit of continuing to cultivate the previously tilled hay field. The final phase of the transaction was never completed. FWP has periodically leased the field to the Pocha Ranch for agricultural use but there is now renewed interest in finally completing the exchange. Both parties hope to structure a deal that identifies

a parcel of private land along the Blackfoot River with a value equal to that of the farm field so that little or no funds are required of either party. The ranch has expressed willingness to place a CE on the farm field after acquisition to protect it from development in perpetuity. The public has long complained about the difficulty of legally accessing the northern portion of the Aunt Molly WMA. FWP has met with neighboring landowners and FWS to discuss the project and potential CE.

**15. Haskill Basin CE (R1) – Endorsement to Proceed**

Ken McDonald, Wildlife Administrator explained F.H. Stoltze Land & Lumber Co. has offered to sell a CE on 3,020 acres of commercial forest land in the headwaters of Haskill Creek. The project would be funded through the Forest Legacy Program, HCP Land Acquisition Program, a private landowner donation, and cash donations from other organizations. The property provides winter range for mule deer, white-tailed deer and moose, is rated Class 1 for terrestrial species richness and provides important habitat for a variety of Tier I species and Haskill Creek supports a population of genetically pure westslope cutthroat trout. Both Iron Horse and the neighboring Whitefish Mountain Resort create an intense amount of high-end development pressure on the adjoining Stoltze property that was sustained through the recent recession. Stoltze's willingness to consider a CE for this property offers an unprecedented opportunity to conserve important fish and wildlife habitat, stop expanded development, and sustain high levels of public recreation. FWP is working closely with the Trust for Public Land to inform partners of this potential opportunity. There has been strong support with more than 17 organizations endorsing the project including the city of Whitefish which gets about 75 percent of its municipal water supply from water diversions on this property. The federal funding sources proposed for this project can only be granted to FWP, so there is no opportunity for other agencies or organizations to secure this property with a CE. This property would likely be developed without a conservation easement because the owners currently receive about six calls per week expressing interest in buying some of this land, and demand for high-end development properties remains strong.

**16. Sinclair Creek CE (R1) – Endorsement to Proceed**

Ken McDonald, Wildlife Administrator explained a private landowner who owns approximately 220 acres of ranch and forest land in Sinclair Creek drainage, a tributary to the Tobacco River, would like to sell a CE to FWP or both FWP and Vital Ground. It adjoins a 700-acre CE held by Montana Land Reliance. The property is a natural wildlife/grizzly bear travel corridor and the property provide

both spring and fall habitats for grizzly and black bears. It provides important winter/spring habitat for an important population of mule deer and elk and habitat for moose and white-tailed deer. The land is sloping with excellent views of the valley and highly vulnerable to development due to significant influx of Canadians buying up and developing recreational land in this area. Development of low elevation grassland, foothill, and riparian habitats increases human-wildlife conflicts particularly for grizzly bears and would reduce habitat values for mule deer, elk, moose, and other wildlife. The project would primarily be funded through a grant from the FWS Section 6 Endangered Species Program and private funding from/through Vital Ground and potential donation from the landowner. The property is currently at risk of being foreclosed upon by a mortgage lender. The funding from this CE is essential to remove the risk of imminent foreclosure, protect the land by keeping it as a single parcel, and ensure continued sustainable land management. It would also protect habitat along a portion of Sinclair Creek, a bull trout spawning stream. The landowner is willing to provide public access for wildlife viewing, hunting, and/or educational purposes. FWP is working closely with the landowner, Vital Ground, and Montana's FWS Section 6 Coordinator to forestall foreclosure and allow FWP and Vital Ground the opportunity to apply for Section 6 funding in 2014. FWP anticipates support from the community because of the property's unique and important wildlife habitat values and the potential opportunity for public access to a largely inaccessible area. FWP could decide not to pursue this conservation opportunity. The federal funding sources proposed for this project can only be granted to FWP; neither a donated CE nor 100 percent private CE funding are viable alternatives. If a CE alternative is not pursued, the property will be foreclosed upon and likely auctioned off and developed.

**Action:** *Commissioner Tourtlotte moved and Commissioner Stuker seconded that the Commission endorse FWP's proposal to negotiate for the purchase of the Sinclair Creek conservation easement.*

Chairman Vermillion asked for public comment.

Commissioner Wolfe stated this project involves his place of employment and will recuse himself from the vote

**Action on Motion:** *Motion Carried. (Chairman Vermillion, Commissioners Stuker, Tourtlotte and Wetsit)*

#### 17. Olson Farms CE (R4) – Endorsement to Proceed

Ken McDonald, Wildlife Administrator explained Olson Farms includes 298 acres along the Missouri River just south of Ulm. Approximately 23 acres is native riparian habitat including mature cottonwood and green ash stands, having a native shrub grassland understory mostly comprised of snowberry, willow and chokecherry; 17 acres are classified as seasonal freshwater emergent wetlands. The property adjoins the 163-acre FWP Ulm FAS which incorporates two miles of Missouri River and Smith River frontage. The two properties would maintain 461 acres of intact riparian, wetland and associated upland habitats along the Missouri River and mouth of the Smith River into perpetuity. A change in ownership would likely result in the loss of FWP's ability to positively impact habitats on this property. Management components include a CE with covenants, grazing management, habitat enhancements such as retiring and converting select dry land crop acres to dense nesting cover and/or native shrub grassland and precluding conversion of riparian vegetation to agriculture. FWP looks to use habitat program funds in combination with an array of other partners to complete this project. Future involvement to complete the proposed CE will include an EA process together with typical press releases and website notification, a public hearing, and presentations for approval to the FW Commission and Board of State Land Commissioners. The preferred alternative is to purchase a CE with funding and habitat partnerships as mentioned above. The property is not offered for sale to FWP, therefore fee purchase of the property is not an option. If FWP took no action, the land would most likely become subdivided or sold in the future, as development pressures increase in the Missouri River valley between Helena and Great Falls.

#### 18. Box Elder Creek CE (R6) - Endorsement to Proceed

Ken McDonald, Wildlife Administrator explained the Box Elder Creek Ranch is located south of Chinook, MT, approximately one mile east of the Bear Paw Battlefield National Historic Site and includes 8,120 contiguous acres; approximately 7,300 acres provides a high

quality mix of native wildlife habitats and associated game bird and big game hunting opportunities. A portion of the ranch includes glaciated plains with shallow wetland habitat and approximately 180 acres of wetland habitat. Upon endorsement, the Department would proceed with negotiations, conduct appropriate analysis and public review processes. The CE allows the ranch to remain in private management and ownership while conserving the productivity and ecological and recreational values of the property; this property is located in an area where the threat of conversion of native range to crop land has been increasing.

**19. Flatt Property CE (R6) – Endorsement to Proceed**

Ken McDonald, Wildlife Administrator explained this proposed CE involves 1,760 contiguous acres. The property is interspersed with numerous ephemeral and seasonal glacial wetlands surrounded by a mix of native mixed grass prairie, seeded native grasslands, ideal for productive breeding habitat for waterfowl, mix of declining grassland birds, including seasonal use by sage-grouse and receives regular use by pronghorn. Through their Revolving Land Acquisition Program (RLAP), Ducks Unlimited (DU) purchased this property because of its high waterfowl values and the risk of conversion to cropland. RLAP entails DU purchasing private properties in fee, establishing a CE on the property, then reselling the property to the private sector as protected working ranchland. The Flatt project is adjacent to a Waterfowl Production Area administered by the FWS. This CE would expand the wetland and grassland habitats, and opportunities for public hunting and recreation access. Upon endorsement, FWP would proceed with negotiations and conduct appropriate analysis and public review processes. The CE option allows the ranch to remain in private management and ownership while conserving the productivity and ecological and recreational values of the property. In the absence of this project, it's likely the former cropland areas would go back into grain production, directly affecting key habitat values.



**Action: Commissioner Tourtlotte moved and Commissioner Wolfe seconded that the Commission approve FWP to proceed with the negotiations and public process in order to move forward with the purchase of the Aunt Molly land exchange and Haskill Basin, Olson Farms, Box Elder Creek and Flatt Property conservation easements.**

Commissioner Stuker stated he received a call from an Olson Farm adjacent landowner who has concerns about the close proximity of houses to the proposed easement; he is worried about other problems as well. Would like to have restrictions on the easement for safety reasons.

McDonald explained during the process of adopting the CE and management plan, restrictions can be negotiated and the landowner still maintains control; will follow through with Commissioner Stuker's request.

Commissioner Wolfe asked if the intent is to purchase the Flatt Property CE from DU.

McDonald stated yes; if DU has a potential buyer, they would be included in the process.

**Action on Motion: Motion Carried.**

Chairman Vermillion stated the Commission has a proclamation in relation to the Land and Water Conservation Fund:

The **Land and Water Conservation Fund (LWCF)** is a Federal Program that was established by [an](#) Act of Congress in 1964 to provide funds and matching grants to federal, state and local governments for the acquisition of land and water, and easements on land and water, for the benefit of all Americans. The main emphases of the fund are recreation and the protection of national natural treasures in the forms of parks and protected forest and wildlife areas.

**Whereas:** Montana's Outdoor Heritage is vital to the quality of life of our citizens and the United States as a whole.

**Whereas:** Public Access to public water, wildlife and land help ensure a vibrant, economically resilient sector of Montana's economy.

**Whereas:** The Land & Water Conservation Fund has been vital in helping the Department of Fish, Wildlife and Parks fund operations in State Parks for the benefit and enjoyment of all Montanans and visitors to the Great State of Montana.

**Whereas:** The Land & Water Conservation Fund is responsible for helping fund the acquisition of approximately 70% of all Fishing Access Sites in Montana.

**Whereas:** The Land & Water Conservation Fund has been judiciously and efficiently used to ensure future hunting and angling opportunity through the purchase of strategic pieces of land.

**Whereas:** The Land & Water Conservation Fund has been instrumental in conserving vital habitat for Threatened and Endangered Species, ensuring their eventual delisting and return to State Management.

**Whereas:** The ability to connect with Montana's outdoor spaces, publicly owned wildlife, rivers and streams is one of Montana's greatest assets.

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**Whereas** the Land and Water Conservation Fund stateside assistance program has greatly improved the quality of life for all Montana citizens through projects on school playgrounds, city parks, increased recreational opportunities in towns and state lands for non-consumptive users.

**Whereas:** Protecting working landscapes through conservation easements ensures that farmers and ranchers will be able to pass their operations down to their children while preserving Montana's unique and vibrant landscape.

**Whereas:** Senators Max Baucus & Jon Tester have long advocated for access to public lands and waters, fought for funding of the Land & Water Conservation Fund, and helped ensure Montana's economic diversity through their stalwart championship of the Land & Water Conservation Fund.

**Therefore,** be it resolved in acclimation of the Montana Fish and Wildlife Commission acting in regular session on November 13<sup>th</sup>, 2013 in Helena Montana, that the Land & Water Conservation Fund should be reauthorized with no sunset date. Be it further resolved that the United States Congress must full fund the Land & Water Conservation Fund to the full amount of \$900 million per year from offshore mineral leasing royalty without diversion to other programs.

**Action:** *Chairman Vermillion moved and Commissioner Stuker seconded that the Commission approve the proclamation.*

Chairman Vermillion asked for public comment.

Dave Chadwick, Montana Wildlife Federation (MWF) Executive Director, supports the proclamation, thanked the Commission for the endorsement.

Blake Henning, RMEF, supports proclamation, thanked the Commission for supporting the LWCF.

Joe Perry, MSA, supports proclamation, appreciates the proclamation.

John Gibson, Public Land and Water Access Association (PLWA) President, supports the proclamation, thanked the Commission for the proclamation.

Chairman Vermillion stated 70% of Montana FAS sites have been funded by LWCF; thanked Senator Baucus for being supportive of the LWCF over the years and Senator Tester who will be taking over the mantle when Senator Baucus retires next year; very important fund.

***Action on Motion: Motion Carried.***

**20. Public Comment – For Issues Not On This Agenda**

Joe Perry, MSA, stated the sage grouse draft plan is out; explained Habitat Montana and the Upland Game Bird Council is going to be tapped for sage grouse work; urges the Commission to comment on the plan.

Ben Lamb, Sportsman, explained a bill draft is out to eliminate sage grouse hunting; asked the Commission to keep a watchful eye on sage grouse and adhere to the science.

Bob Ream, former Commissioner stated the revised wolf management administrative rules looks good with one exception, the word potential is not needed. Spent four days on the Lost River WMA; saw lots of deer, with the land acquired and other state lands, there is great opportunity in this area; hunting quality has improved; it was an acquisition well done.

John Gibson, PLWA stated the organization is concerned about access; would like the Commission to encourage all agencies to determine what roads are public or private.

***Action: Commissioner Stuker moved and Commissioner Tourtlotte seconded to adjourn the meeting. Motion Carried.***

**The meeting adjourned at 11:32 a.m.**

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Dan Vermillion, Chairman

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M. Jeff Hagener, Director